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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,909	02/03/2004	Zohar Avrahami	206,424	3485

7590 04/17/2006  
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EXAMINER

KENNEDY, SHARON E

ART UNIT PAPER NUMBER

3767

DATE MAILED: 04/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/771,909

Applicant(s)

AVRAHAMI, ZOHAR

Examiner

Sharon Kennedy

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 95-114 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 95-114 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>08/23/05; 08/11/04</u> .  | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action or the MPEP.

### ***Information Disclosure Statement***

The prior art considered in the parent application has been considered herein. If applicant wants a listing of that prior art to appear on the face of any patent issuing from this application, applicant should submit a PTO Form-1449 with a listing thereof. Copies of the prior art are not necessary.

### ***Double Patenting***

Claims 95-106, directed to the device, are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-36 of U.S. Patent No. 6,148,232. Although the conflicting claims are not identical, they are not patentably distinct from each other because the device claims of this application overlap/encompass the device claims of the parent as both are directed to a device for ablating the stratum corneum epidermis.

Claims 107-114, directed to the method, are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-32 of U.S. Patent No. 6,615,079. Although the conflicting claims are not identical, they are not patentably distinct from each other because the method claims of this application

overlap/encompass the method claims of the parent as both are directed to a device for ablating the stratum corneum epidermis.

Claims 95-106, directed to the device, are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-44 of U.S. Patent No. 6,711,435. Although the conflicting claims are not identical, they are not patentably distinct from each other because the device claims of this application overlap/encompass the device claims of the parent as both are directed to a device for ablating the stratum corneum epidermis.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Eggers et al patents have been discussed previously in the parent applications, which prosecution history is incorporated herein.

### ***Allowable Subject Matter***

Claims 94-114 would be allowed if terminal disclaimers as set forth above were filed.

The following is a statement of reasons for the indication of allowable subject matter: See the parent applications.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Kennedy whose telephone number is 571/272-4948. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes, can be reached on 571/272-4959.

Information regarding the status of an application may be obtained by going to [www.uspto.gov](http://www.uspto.gov), clicking on "Status & IFW", entering the application number, and then clicking on one of the tabs to retrieve the appropriate information.

A handwritten signature in black ink that reads "Sharon Kennedy". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Sharon Kennedy  
Primary Examiner  
Art Unit 3767